

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs September 22, 2009

**STATE OF TENNESSEE v. TAMEKA L. HAMILTON**

**Appeal from the Criminal Court for Sullivan County**  
**No. S52,610, S52,821, S53,448, and S53,449 Robert H. Montgomery Jr., Judge**

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**No. E2009-00067-CCA-R3-CD**

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The Defendant, Tameka L. Hamilton, pled guilty in the Sullivan County Criminal Court to violating her probation in case numbers S52,821, S52,610, S53,448, and S53,449. After the probation revocation hearing, the trial court revoked the Defendant's probation and ordered her to serve two years at thirty percent for case numbers S52,610, S53,448, and S53,449 and consecutively to the service of the remaining sentence in case number S52,821. In this appeal as of right, the Defendant argues that the trial court erred in ordering her to serve her sentences in incarceration. Following our review, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Criminal Court is Affirmed.**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

Stephen M. Wallace, District Public Defender; and William A. Kennedy, Assistant Public Defender, attorneys for appellant, Tameka L. Hamilton.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; H. Greeley Welles, Jr., District Attorney General; and Lewis Combs, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

**OPINION**

On February 9, 2007, the Defendant pled guilty to the following:

1. Case number S52,610: one count of forgery valued at over \$500 and one count of theft or property valued at over \$500; and
2. Case number S52,821: one count felony failure to appear;

Thereafter, on May 18, 2007, the Defendant pled guilty to the following:

1. Case number S53,448: one count of forgery valued at over \$500, one count of forgery valued at over \$1,000, two counts of identity theft, one count of theft valued at over \$500, one count of theft over \$1,000, and one count of criminal simulation;
2. Case number S53,449: one count of felony failure to appear.

Pursuant to the plea agreements, the Defendant received an effective sentence of four years as a Range I, standard offender with the manner of service to be determined by the trial court. On July 3, 2007, the trial court placed the Defendant on supervised probation.

At the December 18, 2008 probation revocation hearing, the Defendant's probation officer, Sarah Hodges, testified that she was assigned to supervise the Defendant's probation in Sullivan County. On July 10, 2007, the Defendant violated her probation by moving without permission, testing positive for cocaine two times, failing to pay restitution, and failing to provide a DNA sample. As a result, at the October 30, 2007 hearing, the trial court revoked the Defendant's probation under case number S52,821 and ordered her to serve two years in incarceration. The court reinstated the Defendant's probation in case numbers S52,610, S53,448, and S53,449. The Defendant was released by the Department of Correction pursuant to determinate release and placed back on supervised probation in April 2008.

On July 18, 2008 and July 30, 2008, Ms. Hodges filed two more warrants against the Defendant for probation violations, alleging that the Defendant violated her probation by committing robbery, shoplifting, and resisting and evading arrest in Washington County.<sup>1</sup> The Defendant also allegedly violated her probation by failing to report the arrests to Ms. Hodges and failing to carry and present her probation identification to the arresting officer.

On December 18, 2008, the Defendant testified before the Sullivan County Criminal Court that she committed criminal acts in violation of her probation to "get high." The Defendant acknowledged her addiction, and testified that she had previously attended Eagle's Nest Treatment Facility on an out-patient basis pursuant to an order by the trial court. She testified that rehabilitation, rather than incarceration, was necessary to combat her "bad drug addiction." The Defendant requested that the court order her return to the Eagle's Nest, where "[she] can get the help that [she] need[s]." According to the Defendant, her previous drug rehabilitation at Eagle's Nest was only ineffective because she disagreed with the facility's treatment methods. Thus, she had continued to abuse drugs. The Defendant testified that she could successfully complete drug rehabilitation if given another opportunity. Upon completion of testimony, and after considering the Defendant's guilty pleas and past probation revocation, the trial court revoked her probation in case numbers S52,610,

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<sup>1</sup>The Defendant pled guilty to the criminal charges in Washington County General Sessions Court. The general sessions court then recommended that the Defendant enter the Eagle's Nest Treatment Facility, a six-month, intensive, inpatient rehabilitation program in Knoxville, Tennessee.

S53,448, and S53,449 and ordered her to serve two years at thirty percent. The trial court also revoked the Defendant's probation in case number S52,821 and ordered her to serve the remainder of her two year sentence.

### ANALYSIS

A trial court may revoke a sentence of probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of her release. Tenn. Code Ann. § 40-35-311(e). The decision to revoke probation is in the sound discretion of the trial judge. State v. Kendrick, 178 S.W.3d 734, 738 (Tenn. Crim. App. 2005); State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). The judgment of the trial court to revoke probation will be upheld on appeal unless there has been an abuse of discretion. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). To find an abuse of discretion in a probation revocation case, the record must be devoid of any substantial evidence that would support the trial court's decision that a violation of the conditions of probation occurred. Id.; State v. Grear, 568 S.W.2d 285, 286 (Tenn. 1978); State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). Such a finding "reflects that the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case." State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)).

A trial court is not required to find that a violation of probation occurred beyond a reasonable doubt. Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). The evidence need only show that the court has exercised a conscientious judgment in making the decision and has not acted arbitrarily. Id. In reviewing the trial court's finding, it is our obligation to examine the record and determine whether the trial court has exercised a conscientious, rather than an arbitrary, judgment. Mitchell, 810 S.W.2d at 735 (Tenn. Crim. App. 1991).

After finding by a preponderance of the evidence that the defendant violated probation, the trial court may revoke the defendant's probation and "cause the defendant to commence the execution of the judgment as originally entered, or otherwise in accordance with § 40-35-310." Tenn. Code Ann. § 40-35-311(e) (2006). Following a trial court's probation revocation, "the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension." Id. at § 40-35-310. The trial court may not extend the defendant's probation beyond two years. Id. at § 40-35-308(c).

Although the Defendant's brief indicates that she opposes the trial court's revocation of probation, this Court recognizes that the Defendant more specifically opposes the trial court's decision to impose the Defendant's original sentence rather than reinstate her probation. The Defendant argues that the trial court "could have placed more onerous conditions on [her] and have achieved the proper outcome." The Defendant claims that "[c]ontinued incarceration was not necessary and [the trial court placed a] greater burden on the [her] than was necessary . . ." for

rehabilitation. The Defendant avers that the trial court failed to give weight to the previous recommendation of the Washington County General Sessions Court that she enter Eagle's Nest Treatment Facility. According to the Defendant, her "clear desire to get drug and alcohol treatment[,] " combined with her testimony that she could successfully complete the program if given another opportunity, support her assertion that the trial court could have imposed "[l]ess restrictive measures . . . to facilitate the [her] integration as a useful member of society." The Defendant argues that her desire for rehabilitation should have served as mitigation against incarceration.

In response, the State argues that the trial court did not abuse its discretion because it "exercised conscientious and intelligent judgment in revoking the [D]efendant's probation." The State argues that "[d]espite being given opportunities to address her drug addiction and to seek treatment outside of confinement, the [D]efendant has not ceased her drug abuse and has continued to engage in other criminal behavior." The Defendant's "failure to complete treatment reflects poorly on her potential for rehabilitation." Thus, the State asserts that "[i]t was within the trial court's discretion to order the [D]efendant to serve the remainder of her sentence in confinement, and the trial court did not abuse that discretion in doing so."

After reviewing the record, we conclude that the Defendant's contention that the trial court should have extended her probationary period and sent her to a treatment facility is without merit. The record reflects that the trial court revoked the Defendant's probation because she habitually violated the terms of her supervised probation, and refused to cooperate in the rehabilitation treatment offered by Eagle's Nest Treatment Facility. The trial court stated, "[T]wice I've given [the Defendant] what I consider to be chances to try to improve . . . [,]" yet she continued to commit crimes while on probation. Thus, the trial court ordered the Defendant to serve two years at thirty percent in case numbers S52,610, S53,448, S53,449, consecutively to her remaining sentence in case number S52,821.

The record reflects that the Defendant was given the "benefit of the doubt" by the trial court but failed to take advantage of her probation. Accordingly, we conclude that the trial court did not abuse its discretion in revoking the Defendant's probation, denying her request to re-enter a rehabilitation facility, and ordering her to serve her sentence in incarceration. The judgment of the trial court is affirmed.

### CONCLUSION

In consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

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D. KELLY THOMAS, JR., JUDGE